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VIA ECF AND EMAIL

The Honorable Kimba M. Wood
United States District Judge
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *United States v. Skelos*, No. 15 Cr. 317 (KMW)

Dear Judge Wood:

We write regarding the government's reply in support of its motion to quash the Glenwood-related subpoenas. In our opposition, we argued that *Nixon* requires only *potential* relevance and admissibility, and that the government had not addressed our prior briefing on that issue. (Dkt. 300 at 13-14 (citing Dkt. 273 at 19-20)). Now, in their reply, the government cites a new case that supposedly controls. (Dkt. 305 at 5 (citing *United States v. Marchisio*, 344 F.2d 653 (2d Cir. 1965))). The government is wrong, and we respectfully request leave to respond.

Marchisio held only that the defendant could not require the government to produce a memorandum that was not relevant because the accountant who wrote it did not testify. See 344 F.2d at 669. It has nothing to do with third-party subpoenas, and it does justify withholding evidence relevant to witnesses who are certain to testify, like Bonomo and Dorego. Nor does *Marchisio* say that defendants must know the contents of the documents they seek to subpoena and conclusively prove their relevance and admissibility. In any event, *Marchisio* was decided before *Nixon* and *Irving*, which held precisely the opposite. See *United States v. Nixon*, 418 U.S. 683, 699 n.11, 702 (1974); *In re Irving*, 600 F.2d 1027, 1034 (2d Cir. 1979).

Respectfully submitted,

/s/ Alexandra A.E. Shapiro

Alexandra A.E. Shapiro

cc: Counsel of Record